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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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09/636,272

08/10/2000

Alfred H. Judge

0275S-000379

7259

7590

10/28/2005

Harness Dickey & Pierce PLC
PO Box 828
Bloomfield Hills, MI 48303

EXAMINER

LIEU, JULIE BICHNGOC

ART UNIT

PAPER NUMBER

2636

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/636,272 | JUDGE, ALFRED H. | |
| | Examiner | Art Unit | |
| | Julie Lieu | 2636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to Applicant's response filed August 25, 04.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 26-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, "said power tool housing" lacks antecedent basis. If "a housing" in claim 25 is intended to be the power tool housing, then "said housing" lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 25-27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 9205302U (provided by Applicant).

Claim 25:

Refer to figures 1-4, DE 9205320 (herein after as DE) discloses a power tool comprising:

- a. A housing of drill 1
- b. A motor within the tool (inherent)
- c. An output coupled with the motor
- d. An activation member (inherent) for energizing the motor for rotating the output
- e. A power source (inherent) electrically coupled with the motor and the activation member
- f. A leveling mechanism comprising an LED 2 coupled with the power tool housing and the power source, the leveling mechanism positioned inside the power tool housing near the motor such that the power tool housing surrounds the leveling mechanism, the leveling mechanism including a rotating member 45 which seeks equilibrium position which corresponds to a horizontal or vertical plane, and the light emitting device 2 projecting from the housing at a desired position on the power tool housing so that the light emitting device illuminates, in response to the rotating member equilibrium position, to indicate to a user that the power tool is in a horizontal or vertical position.

Claim 26:

The leveling mechanism in the DE reference further comprising:

- a. the housing coupled within an inside surface of said power tool housing (figs. 1 and 2);
- b. a cavity in the housing (fig. 2);

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- c. the rotating member 45 in the housing, the rotating member 45 moving in said cavity such that the housing, the rotating member rotating member seeks an equilibrium position which corresponds to a horizontal or vertical plane;
- d. electrical contacts (42,44) in contact with said rotating member, the electrical contacts only completing an electrical circuit when said rotating member is in said equilibrium position;
- e. the light emitting device 2 electrically coupled with said electrical contacts; and the power source coupled with said electrical contacts for illuminating the light emitting device when the circuit is complete.

Claim 27:

The rotating member 45 is being fixed for rotation about a center axis in a cylindrical cavity in the housing. See fig. 2.

Claim 30:

The rotating member 45 is mercury which is an electrically conducting material.

Allowable Subject Matter

- 6. Claims 28-29 and 31-37 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Remarks

7. Applicant's arguments have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on MaxiFlex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie Lieu
Primary Examiner
Art Unit 2636

Oct. 23, 05